(1)

Supreme Court, U.S.
FILED

No. 99 2206 JUN 7 1999

OFFICE OF THE CLERK

In The

# Supreme Court of the United States

GRADY R. YOUNG,

*Petitioner,*

v.

CHRISTINE GREGOIRE,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

GRADY R. YOUNG #927915, Pro se
Washington State Penitentiary
1313 N. 13th Ave. / MSC AB102
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78 pp

## QUESTIONS PRESENTED

1. Whether the appellate courts' refusal to conduct an evidentiary hearing and consider the entire record requires reversal or remand.

2. Whether the appellate courts' refusal to conduct an evidentiary hearing on Young's claim that he was convicted by the use of perjury by the prosecution denied Young due process and equal protection of the laws when the Pathologist's perjured testimony provided the prosecution with a motive for murder when he testified that Young's wife had an alcoholic liver, therefore, was an alcoholic which was in contradiction to his own research book introduced at trial which would entitle Young to federal habeas corpus relief.

3. Whether the appellate courts' refusal to conduct an evidentiary hearing when the perjured testimony appears to have been suborned perjury denied Young due process and equal protection of the laws.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner GRADY R. YOUNG, pro se (hereinafter Young) respectfully petitions for a writ of certiorari to review the decisions of every court in the Ninth Circuit available to Young in refusing to address the issue of NEWLY DISCOVERED EVIDENCE NOT AVAILABLE AT TRIAL (The use of perjury by the prosecuting attorney to provide a motive for murder and prejudice the jury against Young. It looks like suborned perjury.) and also refusing to conduct an evidentiary hearing instead of denying Young's appeal without addressing that issue.

## OPINION BELOW

On April 9, 1994 Young filed a motion in the Superior Court of the State of Washington for Clallam County for a new trial (App. A) based on NEWLY DISCOVERED EVIDENCE NOT AVAILABLE AT TRIAL. (The use of perjury by the prosecuting attorney to provide a motive for murder and prejudice the jury against Young. It looks like suborned perjury.) That court refused to respond in any way. That refusal to respond was appealed in The Court of Appeals of the State of Washington Division II on August 24, 1994 and that court also refused to address the issue (App. B). That refusal was appealed in The Supreme Court of the State of Washington on February 13, 1995 and that court also refused to address the issue (App. C). The issue was filed in the United States District Court, Western District of Washington at Tacoma on April 23, 1997 and that court refused to address the issue (App. D). The issue was filed in a motion for reconsideration in the

United States Court of Appeals of the Ninth Circuit on December 15, 1998 and that court refused to address the issue (App. E). These actions by these courts give rise to this petition.

## STATEMENT OF JURISDICTION

The United States Court of Appeals for the Ninth Circuit delivered its final decision on March 15, 1999 (App. E). Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the final decision for reconsideration.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in part:

> "No person shall . . . be deprived of life, liberty, or property without due process of law," U.S. Const. Amend. V.

The Fourteenth Amendment to the Constitution of the United States, Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, Sec. 1.

## STATEMENT OF THE CASE

### A. Situation Prior to Trial, Conviction and Imprisonment:

The District Court had a summarized report of the situation from the records of the State of Washington Court of Appeals Division II in Tacoma, Washington and also a copy of the trial transcript but refused to request two important exhibits presented at the trial when requested by Young's attorney at that time. Some of the statements in the summary contradict the trial transcript.

Young returned home August 9, 1986 and found his wife laying on the back porch, face down. Young could not find a pulse so he went to the Hillcrest Baptist Church where he was the pastor (a little over 100 yards away) and called 911 and told police what he had found and reported that it looked as if she had been shot.

The police did their investigation but claimed that Young was not a suspect until August 12, 1986 when he was accused of murdering his wife and upon his request to talk to an attorney they arrested him. The arrest took place on August 12, 1986 after 9:00 PM. Young was released on cash bail of $5,000.00 pending trial. During the wait for trial Young was permitted to go to Seattle for

Thanksgiving and to Oklahoma and Texas for Christmas in 1986.

Young entered a plea of "not guilty". Young's five children who were all adults have supported him in his plea during the trial and the appeal process.

The trial consisted of only circumstantial evidence. The prosecution made a big issue before the jury of the Pathologist's perjured testimony and used it as a motive for murder. He was able to prejudice the jury against Young and secured a conviction of Premeditated Murder I and Young was sentenced to 280 months in prison (App. F).

**B. Proceedings in District Court:**

Young's appeal in the district court was filed on April 23, 1997 before the effective date of the Antiterrorism and Effective Death Penalty Act of 1996. Therefore, the district court should have addressed all the issues presented by Young's attorney, Melvin D. Hoit, since they had been presented to the Supreme Court of the State of Washington in the Motion for Discretionary Review. However, the district court refused to address the issue of NEWLY DISCOVERED EVIDENCE NOT AVAILABLE AT TRIAL. (The use of perjury by the prosecuting attorney to provide a motive for murder and prejudice the jury against Young. It looks like suborned perjury.) The district court denied Young's appeal (App. D) without an evidentiary hearing which conflicts with this Court's decision in *Townsend v. Sain*, 372 U.S. at 318 (1963). Therein, this Court announced the general rule that, "a

federal evidentiary hearing is required if habeas applicant did not receive a full and fair hearing in a state court, either at the time of the trial or in a collateral proceeding". The district court had the information available that Young did not receive a full and fair hearing in any state court.

**C. Proceedings in the Court of Appeals for the Ninth Circuit:**

The Court of Appeals for the Ninth Circuit denied Young's attorney's petition for a Certificate of Appealability. Therefore, Young submitted a Motion for Reconsideration and a Certificate of Probable Cause on December 15, 1998. Since Young's habeas corpus was filed before the effective date of the Antiterrorism and Effective Death Penalty Act of 1996, the Certificate of Probable Cause should have been issued by the Court of Appeals for the Ninth Circuit as seen in *Jefferies v. Wood*, 103 F.3d 827 (9th Cir. 1996) (en banc) (order). The Court of Appeals for the Ninth Circuit denied Young's motion on March 15, 1999 (App. E) without an evidentiary hearing or addressing the issue of NEWLY DISCOVERED EVIDENCE NOT AVAILABLE AT TRIAL. (The use of perjury by the prosecuting attorney to provide a motive for murder and prejudice the jury against Young. It looks like suborned perjury.) Therefore, every appellate court available to Young in the Ninth Circuit has approved by default the use of perjury by the prosecuting attorney to secure a conviction and deny Young "due process and equal protection of the laws" as provided by the Constitution of the United States.

## REASONS FOR GRANTING THE WRIT

Resolution of whether the appellate courts' refusal to conduct an evidentiary hearing and consider the entire record requires reversal or remand. Resolution of whether the appellate courts' refusal to conduct an evidentiary hearing on Young's claim that he was convicted by the use of perjury by the prosecution denied Young due process and equal protection of the laws when the Pathologist's perjured testimony provided the prosecution with a motive for murder when he testified that Young's wife had an alcoholic liver, therefore, was an alcoholic which was in contradiction to his own research book introduced at trial which would entitle Young to federal habeas corpus relief. Resolution of whether the appellate courts' refusal to conduct an evidentiary hearing when the perjured testimony appears to have been suborned perjury denied Young due process and equal protection of the laws.

An evidentiary hearing would reveal that Young was not convicted on the testimony of the witnesses who testified for the prosecution. A careful review of the entire record reveals that the police and prosecution destroyed their credibility by having an unidentified person in an area "secured" by the police moving things around during their investigation and confirmed by two of the exhibits presented at trial. It would also reveal that the prosecution won at trial by innuendoes and elaborated by speculation as described by Charles Wiggins, who helped prepare the direct appeal. In a personal letter to Young he described what he found from reading the transcript for the direct appeal (App. G). It would also reveal that the prosecution lied to the jury at least 30

times in his first round of the closing arguments (App. H). In *Jencks v. United States*, 353 U.S. 657, 668, 1 L.Ed.2d 1103, 77 S. Ct. 1007 (1957) this Court declared:

> "The function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible to the w: 'l. His function is to vindicate the right of the people as expressed in the laws and give those accused of a crime a fair trial."

An evidentiary hearing would demand reversal or remand for a new trial.

An evidentiary hearing would reveal that the prosecuting attorney used the perjured testimony of the pathologist to secure the conviction since he referred to that "motive" numerous times during the trial. The pathologist was proud of his research book at trial testifying that the book was in its "third printing." However, the pathologist also perjured himself on the title of his book making it more difficult for Young to find the book after the trial. The research book of the pathologist convicted him on two counts: (1) the name of the book was given falsely at trial, and (2) the book convicted him of perjury regarding Young's wife being an alcoholic because his autopsy report revealed that her liver was grossly normal (App. A). The record would also reveal that his testimony is called "purchased testimony" since the records reveals he was paid $500.00 per day to appear in court and testify. In *U.S. v. Lowery*, ___ F. Supp. 2d ___, 1998 WL 492818 (S.D.Fla.) the court discussed Title 18, United States Code, Section 201(c)(2) which states as follows:

(c) Whoever –

> (2) directly or indirectly gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such a person as a witness upon a trial, hearing, or other proceeding, before any court . . . shall be fined under this title or imprisoned for not more than two years, or both.

The court stated that: (1) "It is axiomatic, therefore, that if the judicial process is tainted by the admission of unreliable testimony induced by a defendant's promises, it is no less tainted by the identical actions of the prosecutor." And also, (2) "Purchased testimony is inherently unreliable and will only serve to taint and obscure the entire judicial process."

The court stated in *Connelly v. DeChristoforo*, 416 U.S. 637, 648-649, 40 L.Ed.2d 431, 440, 91 S.Ct. 1868 (1974) that: "The prosecutor does not represent an entity whose interests include winning at all costs, the prosecutor's client is society, which seeks justice not victory."

The use of perjury by the prosecution to win a conviction would entitle Young to federal habeas corpus relief and demand reversal or remand for a new trial.

An evidentiary hearing would reveal that the prosecutor had adequate information available to him for him to know that the pathologist had lied under oath. The record reveals that the policemen who collected evidence in the search of the home testified that they did not find any "alcoholic beverage" of any kind during their search of the home. An evidentiary hearing would reveal that the prosecution produced no witness who had: (1) sold Young's wife any kind of alcoholic beverage; or (2) had

ever seen her drink any kind of alcoholic beverage; nor (3) had ever smelled alcohol on her breath. Therefore, the prosecution found a pathologist who was willing to lie for him to produce a "motive" for murder and prejudice the jury against Young. Thereby, Young was denied due process and equal protection of the laws. This action is a contradiction of the role of prosecuting attorney as seen in *United States v. Doe,* 860 F.2d 488 (1st Cir. 1988) which says that: "The proper role of a criminal prosecutor is not simply to obtain a conviction, but to obtain a fair conviction." Also see *Brown v. Borq,* 951 F.2d 1011 (9th Cir. 1991).

The trial court also refused to permit the defense to show that the pathologist had lied about his reason for no longer being employed as the Medical Examiner for the State of Oregon. The record reveals that he testified that he left because of an administrative dispute. He was in fact fired from his job for "violation of the trust of the people of Oregon". The prosecuting attorney claimed it was under appeal so the defense was not permitted to reveal his lack of credibility to the jury (App. I).

The use of perjury by the prosecution to prejudice the jury against Young and get a conviction is in contradiction to the recent decision of the Supreme Court of the United States in the *Clinton v. Lewinsky* (U.S. 1998-1999) scandal in which the president of the United States was censured and condemned for perjuring himself under oath.

## CONCLUSION

For the foregoing reasons, the Writ of Certiorari should be granted for reversal or remand for a new trial.

Dated this 3rd day of June 1999.

Respectfully submitted,

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Washington State Penitentiary
1313 N. 13th Ave. / MSC AB102
Walla Walla, Washington 99362

**APPENDIX A**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| GRADY R. YOUNG,<br>Petitioner-Appellant,<br>v.<br>CHRISTINE GREGOIRE,<br>Respondent-Appellee. | No. 98-35223<br>DC# CV-97-05244-RJB<br>Western District of Washington (Tacoma)<br>ORDER<br>(Filed March 15, 1999) |

Before: TROTT and FERNANDEZ, Circuit Judges.

Appellant's motion for reconsideration is denied.

No further filings will be accepted in this closed appeal.

**APPENDIX B**

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON

FOR CLALLAN COUNTY

| | |
|---|---|
| GRADY RAY YOUNG,<br>PETITIONER,<br>VS.<br>STATE OF WASHINGTON,<br>RESPONDENT. | NO. 86-1-00065-7<br>MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE NOT AVAILABLE AT TRIAL |

COMES NOW, the petitioner, Grady Ray Young, herein after referred to as Rev. Young, petitions this Honorable Court for a new trial based on newly discovered evidence not available at trial.

After taking an oath to "TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH" [EXHIBIT #1], Deputy Hopf perjured himself when he testified that his question regarding the position of the toilet seat after Rev. Young went to the bathroom was asked on August 10, 1986 (RP 1345). Robert Wilbur of 1310 W. 9th in Port Angeles has submitted an affidavit swearing that he was on the back seat of the Sheriff Department's Patrol car when Deputy Hopf asked Rev. Young that question on Saturday night, August 9, 1986 [EXHIBIT #2]. Rev. Young had been forbidden by defense counsel to discuss the case with anyone prior to the trial or during the trial. Defense counsel did not do a thorough job of questioning the members of the Hillcreat Baptist

Church prior to the trial so Robert Wilbur was not permitted to testify concerning the question regarding the toilet seat at the trial. Since his incarceration Rev. Young has conducted an intensive search for information that would help his cause. Deputy Hopf should be referred for prosecution for perjury and a new trial granted for Rev. Young without the testimony of Deputy Hopf. Dr. William Brady, who did the autopsy on the body of the deceased (ELVA YOUNG), also took an oath to tell "THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH" [EXHIBIT #1]. However, he perjured himself on two subjects during his testimony at the trial. He testified that he had written a book entitled "AN OUTLINE OF MEDICAL LEGAL DEATH INVESTIGATION" (RP 1168). However, the actual name of his book is "A PHYSICIAN/ATTORNEY'S OUTLINE OF DEATH INVESTIGATION" [EXHIBIT #3]. His book is not sold in book stores. It has no Library Of Congress number. It is not copyrighted. It is not published by a known publisher. Therefore it was very difficult to find a copy of it. The book was not available at trial. Dr. William Brady, also perjured himself as a Medical Doctor at trial, when he testified that the liver of Elva Young, was an ALCOHOLIC LIVER (RP 1194). Information introduced at trial by Mr. Bruneau from Dr. Brady's notes and information contained in Dr. Brady's book shows that it was medically IMPOSSIBLE for Elva Young's Liver to have been Alcoholic. Mr. Bruneau read from page 8 of Dr. Brady's notes giving the information that Elva Young's liver weighted [sic] 1420 grams (RP 1199). The table of contents of Dr. Brady's book reveals the title of chapter 7 of Dr. Brady's book to be "IS THE DEATH NATURAL"

[EXHIBIT #4], and on page 67 of the book Dr. Brady states: "FATTY DISEASE OF THE LIVER". This disease is associated with extraordinary obesity or chronic alcoholism and commonly causes sudden and unexpected death. These victims' autopsies generally reveal a liver weight of 2.5 - 4.0 Kg. (NORMAL 1.4 - 1.6 Kg.) and an organ replaced by fat. The mechanism of death is presumed to involve a metabolic disorder [EXHIBIT #5, P. 67 of his book]. Since a normal liver weights 1400 grams (1.4 Kg) to 1600 grams (1.6 Kg.) and Elva Young's liver weighted [sic] only 1420 grams, her liver was "GROSSLY NORMAL" being only 20 grams more than the beginning weight of a normal liver. Also considering that Elva Young's liver weighted [sic] 1080 grams less than the beginning weight of an alcoholic liver (2500 Grams), it had to have been a "GROSSLY NORMAL" liver according to Dr. Brady's research. Dr. Brady's own testimony at trial convicted him of perjury according to his findings and his research in addition to the name of his book. Therefore, Dr. Brady should be referred for prosecution for perjury. Dr. Brady's testimony looks like suborn perjury in light of all the evidence.

THEREFORE: Rev. Young should be granted a new trial without the testimony of Deputy Hopf or Dr. William Brady, admitted due to their perjury.

Dated this 9th day of April 1994.

/s/ Grady Ray Young
Grady Ray Young #927915
4-Wing
Wash. State Pen.
P.O. Box 520
Walla Walla, Wash. 99362

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON

FOR CLALLAN COUNTY

| | |
|---|---|
| GRADY RAY YOUNG,<br>PETITIONER,<br>VS.<br>STATE OF WASHINGTON,<br>RESPONDENT. | NO. 86-1-00065-7<br>AFFIDAVIT OF GRADY RAY YOUNG |

Grady Ray Young, swears on oath deposes and says;

1. I am the petitioner in the above entitled cause.
2. I have read all the contents and know them to be true.
3. Everything is true and correct to the best of my knowledge.

I, Grady Ray Young, declare under penalty of perjury the foregoing Affidavit is true and correct to the best of my knowledge and ability pursuant to *Little v. Rhay*, 8 Wn.App. 725, 509 P.2d 92 (1973): Title 18 U.S. Code Sec. 1621 and Title 28 U.S. Code sec. 1746.

Dated this 9th day of April 1994.

/s/ Grady Ray Young
Grady Ray Young #927915
4-Wing
Wash. State Pen.
P.O. Box 520
Walla Walla, Wash. 99362

[LOGO]

**BETTY J. LANCASTER**

COURT REPORTER
149 HOLLAND ROAD
SEQUIM, WA 98382
(206) 683-3217

TO: Mr. Grady R. Young 927915
Box 520 A-17, 1-N
Walla Walla, WA 99362

RE: Judge Velie's oath, as administered in court.

Do you solemly swear that the testimony you shall give in the cause before you now will be the truth, the whole truth, and nothing but the truth, so help you God.

---

## AFFIDAVIT

STATE OF WASHINGTON ]
COUNTY OF Clallam ]
] SS. AFFIDAVIT OF
] ROBERT WILBUR
]

ROBERT WILBUR, swears on oath deposes and says;

I, Robert Wilbur, do hereby solemnly swear that on Saturday night, August 9, 1986, I was in the back seat of the Clallam County Sheriff Department's Patrol Car in which Rev. Young was seated in the front seat. Deputy Hopf came to the Patrol car on one occasion and I heard him ask Rev. Young how he left the toilet seat after he had gone to the bathroom, up or down? Rev. Young answered Deputy Hopf briefly but clearly.

/s/ Robert J. Wilbur
AFFIANT

Robert Wilbur

SUBSCRIBED AND SWORN TO before me this 30th day of March 1994.

/s/ Dana Steed
NOTARY PUBLIC
in and for the State of
WASHINGTON, residing at
Port Angeles

App. 8

A Physician/Attorney's

**Outline of**

**Death**

**Investigation**

Third Edition
1982

William J. Brady, M.D.

* * *

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* * *



**ASTHMA**

Long-standing bronchial asthma with a consequent cor pulmonale will produce quite sudden deaths. Asthmatics do also die in "status asthmaticus," despite stories to the contrary.

**ACUTE EPIGLOTTITIS**

Acute epiglottitis, usually due to Hemophilus influenza type-B, produces distressingly-rapid fatalities in children, generally in the two-to-eight-year range. A sore throat, muffled voice, difficulty swallowing, or a borderline fever shortly before death are often described. Autopsy such deaths suspecting epiglottitis.

## FATTY DISEASE OF THE LIVER

This disease is associated with extraordinary obesity or chronic alcoholism and commonly causes sudden and unexpected death. These victims' autopsies generally reveal a liver weight of 2.5 - 4.0 kg (normal 1.4 - 1.6 kg) and an organ replaced by fat. The mechanism of death is presumed to involve a metabolic disorder.

In these deaths, consider a superimposed lobar pneumonia, fatal ethanol or methanol intoxication, or death during delirium tremens. A diagnosis of fatty metamorphosis of the liver is an accepted and frequent certification in any large urban medical examiner's office.

Sudden death due to cirrhosis of the liver is infrequent. These people more commonly die hospitalized in terminal hepatic failure.

## CERTIFICATION OF ALCOHOLIC DEATHS

Families and friends are usually antagonized by the term "alcoholism" appearing on a death certificate. If the case attracts publicity, children dislike being reminded that their dad "died a drunk." An accurate summary of the problem may employ other words.

The term "Laennec's Hepatic Cirrhosis" is used in many medical examiner offices as a synonym for chronic alcoholism with no intention of indicating that the liver is certainly fibrotic and scarred. A family who well knows of a habitual drinking pattern almost always will calmly accept an explanation that the deceased probably had "liver trouble." The necessary information has been conveyed in a way that will not insult that family nor waste

hours arguing with someone who wishes to change the death certificate.

* * *

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
FOR CLALLAM COUNTY

| | |
|---|---|
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After taking an oath to "TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH" [EXHIBIT # 1], Deputy Hopf perjured himself when he testified that his question regarding the position of the toilet seat after Rev. Young went to the bathroom was asked on August 10, 1986 (RP 1345). Robert Wilbur of 1310 W. 9th in Port Angeles has submitted an affidavit swearing that he was on the back seat of the Sheriff Department's Patrol car when Deputy Hopf asked Rev. Young that question on Saturday night, August 9, 1986 [EXHIBIT # 2]. Rev. Young had been forbidden by defense counsel to discuss the case with anyone prior to the trial or during the trial. Defense counsel did not do a thorough job of questioning the members of the Hillcrest Baptist Church prior to the trial so Robert Wilbur was not permitted to testify concerning the question regarding the

toilet seat at the trial. Since his incarceration Rev. Young has conducted an intensive search for information that would help his cause. Deputy Hopf should be referred for prosecution for perjury and a new trial granted for Rev. Young without the testimony of Deputy Hopf.

Dr. William Brady, who did the autopsy on the body of the deceased (ELVA YOUNG), also took an oath to tell "THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH" [EXHIBIT # 1]. However, he perjured himself on two subjects during his testimony at the trial. He testified that he had written a book entitled "AN OUTLINE OF MEDICAL LEGAL DEATH INVESTIGATION" (RP 1168). However, the actual name of his book is "A PHYSICIAN/ATTORNEY'S OUTLINE OF DEATH INVESTIGATION" [EXHIBIT # 3]. His book is not sold in book stores. It has no Library of Congress number. It is not copyrighted. It is not published by a known publisher. Therefore it was very difficult to find a copy of it. The book was not available at trial. Dr. William Brady, also perjured himself as a Medical Doctor at the trial, when he testified that the liver of Elva Young, was an ALCOHOLIC LIVER (RP 1194). Information introduced at trial by Mr. Bruneau from Dr. Brady's notes and information contained in Dr. Brady's book shows that it was medically IMPOSSIBLE for Elva Young's Liver to have been Alcoholic. Mr. Bruneau read from page 8 of Dr. Brady's notes giving the information that Elva Young's liver weighted 1420 grams (RP 1199). The table of contents of Dr. Brady's book reveals the title of chapter 7 of Dr. Brady's book to be "IS THE DEATH NATURAL" [EXHIBIT # 4], and on page 67 of the book Dr. Brady states: "FATTY DISEASE OF THE LIVER". This disease is

associated with extraordinary obesity or chronic alcoholism and commonly causes sudden and unexpected death. These victims' autopsies generally reveal a liver weight of 2.5 -4.0 Kg. (NORMAL 1.4 -1.6 Kg.) and an organ replaced by fat. The mechanism of death is presumed to involve a metabolic disorder [EXHIBIT # 5, p. 67 of his book]. Since a normal liver weights [sic] 1400 grams (1.4 Kg.) to 1600 grams (1.6 Kg.) and Elva Young's liver weighted [sic] only 1420 grams, her liver was "GROSSLY NORMAL" being only 20 grams more than the beginning weight of a normal liver. Also considering that Elva Young's liver weighted [sic] 1080 grams less than the beginning weight of an alcoholic liver (2500 grams), it had to have been a "GROSSLY NORMAL" liver according to Dr. Brady's research. Dr. Brady's own testimony at trial convicted him of perjury according to his findings and his research in addition to the name of his book. Therefore, Dr. Brady should be referred for prosecution for perjury. Dr. Brady's testimony looks like suborn [sic] perjury in light of all the evidence.

Therefore: Rev. Young should be granted a new trial without the testimony of Deputy Hopf or Dr. William Brady, admitted due to their perjury.

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## APPENDIX C

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

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| In the Matter of the Personal Restraint Petition of GRADY RAY YOUNG, Petitioner. | ) | No. 16773-5-II<br>ORDER DENYING MOTION FOR RECONSIDERATION<br>(Filed Jan. 17, 1995) |

**THE COURT** has considered the petitioner's motion for reconsideration and has determined that it should be denied. Accordingly, it is

**SO ORDERED.**

**DATED** this 17 day of January, 1995.

**FOR THE COURT:**

/s/ Elaine Houghton
CHIEF JUDGE

cc:
Grady R. Young
#927915 4-Wing
P.O. Box 520
Walla Walla, WA. 99362

David Harold Bruneau
Clallam Co Prosecuting Attorney
Clallam Co. Courthouse
223 E. 4th
Port Angeles, WA. 98362

## APPENDIX D

## THE SUPREME COURT OF WASHINGTON

| | |
|---|---|
| In the Matter of the Personal Restraint Petition of GRADY RAY YOUNG, Petitioner. | No. 62589-1<br>ORDER<br>C/A No. 16773-5-II<br>(Filed Jul. 13, 1995) |

All five members of Department I of the Court considered the matters set on its July 12, 1995, Motion Calendar, the files herein and unanimously agreed that the following order be entered. Therefore, Chief Justice Barbara Durham directed that this order be entered;

IT IS ORDERED:

That petitioner's Motion to Modify Commissioner's Ruling is denied.

I CERTIFY THAT THIS ORDER WAS ENTERED BY THE COURT ON THIS 17TH DAY OF JULY, 1995.

/s/ Ronald R. Carpenter
RONALD R. CARPENTER
DEPUTY CLERK

**THE SUPREME COURT**
STATE OF WASHINGTON
[LOGO]

C.J. MERRITT
SUPREME COURT CLERK
RONALD R. CARPENTER
DEPUTY CLERK, CHIEF
STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929
(360) 357-2077

April 18, 1995

Mr. Grady R. Young
#927915 4-Wing
P.O. Box 520
Walla Walla, WA 99362

Honorable David Ponzoha,
Clerk
Division II, Court of
Appeals
945 Market Street TB-06
Tacoma, Wa 98402

Honorable David Bruneau
Clallam County Prosecutor
223 E. 4th
Port Angeles, WA 98362

Re: Supreme Court
No. 62589-1 – In re the Personal Restraint Petition of
Grady Ray Young

Court of Appeals No. 16773-5-II

Clerk, Counsel & Mr. Young:

Enclosed please find RULING DENYING MOTION FOR DISCRETIONARY REVIEW, signed by the Supreme Court Commissioner on April 18, 1995, in the above entitled cause.

Sincerely,

/s/ Ronald R. Carpenter
RONALD R. CARPENTER
Supreme Court Deputy Clerk

**THE SUPREME COURT OF WASHINGTON**

| | | |
|---|---|---|
| In re the Personal Restraint Petition of GRADY RAY YOUNG, Petitioner. | ) | No. 62589-1 |
| | ) | RULING DENYING MOTION FOR DISCRETIONARY REVIEW |
| | ) | (Filed Apr. 18, 1995) |

Grady Young was convicted of first degree murder in 1987. The Court of Appeals affirmed the judgment and sentence in July of 1988, and this court denied Mr. Young's petition for review later that year. The case was mandated on December 12, 1988. In August of 1992, Mr. Young filed a personal restraint petition challenging his conviction. The Chief Judge of Division Two of the Court of Appeals dismissed the petition as untimely. RCW 10.73.090. The Court of Appeals granted Mr. Young's motion for reconsideration as to his challenge to the sufficiency of the evidence, but rejected that claim on its merits. Mr. Young now moves for discretionary review by this court. RAP 16.14(c); RAP 13.5.

With the exception of the claim that the evidence was insufficient, the petition is untimely, and was properly dismissed on that ground. RCW 10.73.090 – .100. The Court of Appeals also did not err in rejecting Mr. Young's challenge to the sufficiency of the evidence. Mr. Young was convicted of murdering his wife. She was shot in the head and back with a .22 caliber rifle police found under the Youngs' house. Mr. Young's fingerprints were on the plastic bag in which the gun had been hidden. Police also found, under Mr. Young's bed and in his closet, several items he had reported as missing from his house. There

was, in short, ample evidence from which a rational trier of fact could conclude that Mr. Young murdered his wife. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In sum, Mr. Young has not shown that the Court of Appeals erred in dismissing his personal restraint petition or, therefore, that review is warranted under RAP 13.5. The motion for discretionary review is accordingly denied.

/s/ Geoffrey Crooks
COMMISSIONER

April 18, 1995

**APPENDIX E**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

| | | |
|---|---|---|
| GRADY R. YOUNG,<br>Petitioner,<br>v.<br>CHRISTINE GREGOIRE,<br>Respondent. | ) | Case No. C97-5244RJB<br><br>REPORT AND RECOMMENDATION |

This matter has been referred to United States Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(A) and 636(b)(1)(B), and Local Magistrates Rule MJR3 and MJR4. Petitioner is a state prison inmate who is seeking federal habeas relief pursuant to 28 U.S.C. § 2254. Respondent has answered the petition in the form of a motion for summary judgment, and petitioner has filed two briefs in opposition to respondent's answer. Thus, the case is procedurally ripe for a decision by the Court.

After carefully reviewing the remaining record, the undersigned recommends that the Court deny the petition. The following report is submitted for the Court's review.

## FACTUAL AND PROCEDURAL BACKGROUND

The Washington State Court of Appeals accurately summarized the facts underlying petitioner's conviction:

On the day Elva Young was killed, Grady Young called 911 at 5:48 p.m. He told the dispatcher that he had returned home and found his wife "had no pulse, was unconscious, and had been shot." When the police arrived, Young told them that he had left the house around 4 p.m., drove to Port Angeles spit, stayed there about an hour, and stopped at two stores before returning home. The clerks at both stores remembered Young coming in that day, but could not specify a time or remember whether he made any purchases.

Young also told the officers that he did not enter the house after he found Elva, because he did not want to disturb the crime scene. He said that, instead, he walked about 100 yards to the church where he was pastor to phone 911. The police later found a witness who told them that she called the Young home to find out what had happened after she heard, on her scanner, the dispatcher send officers to the scene. She said that Young answered the telephone on the first ring. She specifically remembered that she called at 5:50 p.m. Young later told police that he had entered the house to answer the telephone.

Upon investigating the scene, the police found two garbage cans under a window of the home, a window screen that had been removed, and a screwdriver on the ground. From this, they initially concluded that a burglar had been in the house and had shot Mrs. Young.

Asked whether any items were missing from the house, Young identified: a tan attache' case; two sets of binoculars; a camera and flash attachment; a .22 rifle and its ammunition; a shotgun;

and a jewelry box. A fingerprinting expert, dusting the house for prints, found a tan attache' case under a bed. Inside were the binoculars, the ammunition, and the camera and flash attachment. The officer also found the missing jewelry box in Young's closet, and a pair of rubber gloves in the back of his filing cabinet.

One of the officers searched the crawl space under the house. He found two green garbage bags; one contained the missing shotgun and the other the .22 rifle. The bag containing the rifle bore 23 of Young's fingerprints; there were no prints on the bag with the shotgun. Young told the officers that the bags were similar to those he kept in the house for transferring food from the freezer at the church to the house. This, he said, explained why his fingerprints were on one bag and not on the other.

It was determined the Elva Young had been shot 3 times with Young's .22 rifle. Young was charged with and convicted of first degree murder.

Following Mr. Young's conviction he appealed to the Washington Court of Appeals, raising ten (10) assignments of error. The appellate court affirmed Mr. Young's conviction in an unpublished opinion. Subsequently, Mr. Young sought discretionary review by the Washington Supreme Court and filed a petition for review, presenting the state's highest court with the following four issues:

(i) whether the "corroborating circumstances" requirement of Washington Evidence Rule 804(b)(3) denied Mr. Grady his federal constitutional rights to present

a defense, to a jury trial, and to due process;

(ii) whether the trial judge's refusal to refer to Mr. Young as "Reverend Young" was a comment on the evidence, in violation of the state constitution;

(iii) whether the presence of a married couple on the jury denied Mr. Young his right under the state constitution to be tried by twelve impartial jurors; and

(iv) whether the presence of a married couple on the jury violated Mr. Young's right to the appearance of fairness.

On November 29, 1988, the Washington Supreme Court denied Mr. Young's petition for review without comment.

Almost three years later, Mr. Young filed a petition for writ of habeas corpus with this Court containing six grounds for relief, alleging: (1) the trial court's exclusion of defense evidence denied him his right to compulsory process, due process, and a fair trial; (2) the trial court's refusal to refer to him as "Reverend" constituted an improper comment on the evidence, violating his rights to due process and a fair trial; (3) the presence of a married couple on his jury denied him his right to an impartial jury of twelve; (4) the trial court's replaying of a taped 911 call at a slower speed effectively altered that evidence and denied Mr. Young his rights to a fair trial and to due process; (5) the trial court's denial of a limiting instruction regarding the 911 call violated Mr. Young's due process and fair trial rights; and (6) his rights to a fair trial and to due process were violated by the accumulation of errors in grounds one through five.

On respondent's motion to dismiss, the Federal District Court in Seattle concluded Mr. Young had properly exhausted state remedies regarding his first ground for relief but that he had failed to exhaust state remedies with respect to his remaining five claims.

In August of 1992, Mr. Young filed a personal restraint petition with the Washington Supreme Court. This petition presented the same five grounds he presented in his federal petition and the following two additional claims: (1) insufficient evidence to support the conviction, and (2) the denial of effective assistance of counsel on direct appeal. The state court initially dismissed Mr. Young's entire personal restraint petition as time-barred under RCW 10.73.090, but on reconsideration the state court agreed to consider the merits of the insufficient evidence claim, because the statutory one-year bar rule does not preclude consideration of such a claim. However, even after considering the merits of this claim, the Court of Appeals dismissed the petition on November 22, 1994, and Mr. Young filed a motion for discretionary review in the Washington Supreme Court raising the same seven claims.

On April 18, 1995, the Commissioner of the Washington Supreme Court denied the motion for review. The Commissioner concluded that (1) there was sufficient evidence from which the jury could have found him guilty, and (2) the remainder of Mr. Young's claims were proceduraliy barred under RCW 10.73.090. *Id.* The Supreme Court denied Mr. Young's motion for reconsideration of the commissioner's ruling on July 13, 1995. Exhibit 45.

In the case at bar, Mr. Young presents the following nine grounds for relief:

(1) the trial court excluded material defense evidence;

(2) the trial court improperly commented on the evidence by refusing to address Mr. Young as "Reverend";

(3) the court erroneously empaneled a husband and wife on the jury;

(4) the replaying of the 911 call at a slower speed unfairly altered the evidence;

(5) the trial court erroneously denied a limiting instruction regarding the replaying of the 911 tape;

(6) there was insufficient evidence presented to prove Mr. Young's guilt;

(7) appellate counsel provided ineffective assistance;

(8) the state courts erroneously denied a new trial based on newly discovered evidence;

(9) the cumulative effect of the claimed errors denied Mr. Young a fair trial.

## EVIDENTIARY HEARING NOT REQUIRED

In its Order Directing Service and Response, the court directed respondent to state in her response whether or not an evidentiary hearing was necessary. Accordingly, respondent has informed the court that she does not think an evidentiary hearing is required. The function of an evidentiary hearing is to try issues of fact,

such a hearing is unnecessary when only issues of law are raised. *See e.g. Yeaman v. United States,* 326 F.2d 293 (9th Cir. 1963). After careful review of the record, the undersigned judge concludes that there are no relevant factual disputes to resolve in order for the Court to render its decision in this case. Accordingly, an evidentiary hearing was not conducted.

## DISCUSSION

### A. *Exhaustion AND Procedural Bar; Petitioner's 2, 3, 4, 5, 7, 8, & 9 Claims Should Be Dismissed*

As a threshold issue the Court must first determine whether or not petitioner has properly presented his federal habeas claims to the state courts. In order to satisfy the exhaustion requirement, petitioner's claims must have been fairly presented to the state's highest court. *Picard v. Connor,* 404 U.S. 270, 276, 92 S.Ct. 509, 30 L.Ed.2d 438 (1971); *Middleton v. Cupp,* 768 F.2d 1083, 1086 (9th Cir. 1985). A federal habeas petitioner must provide the state courts with a fair opportunity to correct alleged violations of prisoners' federal rights. *Duncan v. Henry,* ___ U.S. ___, 115 S.Ct. 887, 888 (1995). It is not enough that all the facts necessary to support the federal claim were before the state courts or that a somewhat similar state law claim was made. *Id, citing Picard v. Connor,* 404 U.S. 270 (1971) and *Anderson v. Harless,* 459 U.S. 4 (1982).

The United States Supreme Court has recognized that when a petitioner has defaulted on his claims in state court, principles of federalism, comity, and the orderly administration of criminal justice require that federal courts forego the exercise of their habeas corpus power.

*Francis v. Henderson*, 425 U.S. 536, 538-39 (1976). Rules that promote the prompt resolution of all constitutional claims at the appropriate state court proceeding must be respected by a federal habeas court. *Coleman v. Thompson*, 501 U.S. 722 (1991).

As shown in the factual summary above, petitioner has previously presented this court with six of the same claims raised in the current petition. Significantly, the court earlier concluded that five of those six claims were not properly exhausted. When Mr. Young attempted to exhaust the five unexhausted claims in a subsequent personal restraint petition the State Court of Appeals dismissed the petition as procedurally barred under RCW 10.73.090. Petitioner's motion for discretionary review of those five claims was similarly dismissed by the State Supreme Court. Accordingly, Mr. Young is barred from raising these five claims unless he can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. *See Coleman*, 111 S. Ct. 2546, 2565 (1991) (emphasis added).

To satisfy the "cause" prong of the cause and prejudice standard, petitioner must show that some objective factor external to the defense prevented him from complying with the state's procedural rule. *Id.* at 266 (*citing Murray v. Carrier*, 477 U.S. 478, 488 (1986)). "Prejudice" exists if the alleged errors were of constitutional dimensions and worked to the defendant's "actual and substantial disadvantage." *United States v. Frady*, 456 U.S. 152, 170 (1982). Alternatively, in an "extraordinary case" the habeas court may grant the writ without a showing of

cause and prejudice to correct a "fundamental miscarriage of justice" if petitioner can show that his conviction is the result of a constitutional violation and that he is actually innocent. *Murray,* 477 U.S. at 495-96.

In his Memorandum Supporting his § 2254 petition, Mr. Young attempts to demonstrate sufficient cause by arguing his appellate counsel was ineffective. This argument was also made when petitioner was previously before the federal court. Magistrate Judge Weinberg rejected the argument stating:

> Petitioner maintains that there was cause for his default. He states that he had no control over the effectiveness or inaction of his appellate attorneys. The Supreme Court, in *Coleman* and in *Carrier,* considered the circumstances under which attorney error constitutes cause. The Court concluded: "So long as a defendant is represented by counsel whose performance is not constitutionally ineffective under the standard established in *Strickland v. Washington,* [citation omitted], we discern no inequity in requiring him to bear the risk of attorney error that results in a procedural default." *Coleman,* 115 L.Ed. 2d at 670-71 (quoting *Carrier,* 477 U.S. at 488).
>
> The *Coleman* Court noted that since there is no constitutional right to an attorney in state post-conviction proceedings, a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings. *Id.* at 671. "In the absence of a constitutional violation, the petitioner bears the risk in federal habeas for all attorney errors made in the course of the representation, as *Carrier* says explicitly." *Id.* At 672.

Petitioner therefore does not show cause by alleging attorney error.

After reviewing the arguments, petitioner fails to demonstrate sufficient cause for the default and actual prejudice as a result of the alleged violation of federal law. Moreover, petitioner has not shown this court that this is an extraordinary matter and that a fundamental miscarriage of justice has occurred. Accordingly petitioner is barred from raising the five grounds previously found by this court to be unexhausted and subsequently procedurally barred by the state court. This conclusion affects the following five claims (petitioner's second, third, fourth, fifth, and part of his ninth claim in the current petition) raised by petitioner:

(1) the trial court's refusal to refer to him as "Reverend" constituted an improper comment on the evidence, violating his rights to due process and a fair trial;

(2) the presence of a married couple on his jury denied him his right to an impartial jury of twelve;

(3) the trial court's replaying of a taped 911 call at a slower speed effectively altered that evidence and denied Mr. Young his rights to a fair trial and to due process;

(4) the trial court's denial of a limiting instruction regarding the 911 call violated Mr. Young's due process and fair trial rights; and

(5) Mr. Young's alleged right to a fair trial and to due process were violated by the accumulation of errors in grounds one through five, raised in the previous federal petition.

Similarly, petitioner's seventh, eighth, and remaining part of his ninth claim have been procedurally barred by the state court. Petitioner's seventh claim raises the issue

of his appellate counsel's ineffective assistance, the eighth claim alleges that the state court erroneously denied petitioner a new trial, and the ninth claim raises the cumulative effect of the claimed errors. The seventh and ninth claims were presented to the state appellate court in Mr. Young's 1992 personal restraint petition. Petitioner's eighth claim was presented in a supplemental memorandum filed with the state appellate court in his 1992 personal restraint petition. Unsuccessful at the appellate court level, petitioner raised these three claims in a motion for discretionary review by the State Supreme Court. The State Supreme Court ruled, "With the exception of the claim that the evidence was insufficient, the petition is untimely, and was properly dismissed on that ground. RCW 10.73.090-.100."

In sum, the Court should honor the state court's procedural limitations and dismiss petitioner's second, third, fourth, fifth, seventh, eighth, and ninth claims raised in the instant petition. Petitioner has failed to show cause and actual prejudice, or that this is an "extraordinary case" where the court needs to correct a "fundamental miscarriage of justice."

*B. The Merits of Petitioner's First and Sixth Grounds*

Federal courts may intervene in the state judicial process only to correct wrongs of a constitutional dimension. *Engle v. Isaac*, 456 U.S. 107 (1983). Section 2254 is explicit in that a federal court may entertain an application for writ of habeas corpus "only on the ground that [the petitioner] is in custody in violation of the constitution or law or treaties of the United States." 28 U.S.C.

§ 2254(a). The Supreme Court has stated many times that federal habeas corpus relief does not lie for mere errors of state law. *Lewis v. Jeffers*, 497 U.S. 764 (1990); *Pulley v. Harris*, 465 U.S. 37, 41 (1984); *Estelle v. McGuire*, 502 U.S. 62 (1991). On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, Tit. I, which significantly affected the habeas statute. The newly revised statute states:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim –
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

Here, the Court should dismiss the petitioner's first and sixth claims because they were earlier adjudicated on the merits in State court proceedings and the State court decisions were not contrary to, nor involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; nor did the State court decisions result in decisions that were based on an unreasonable determination of the facts

in light of the evidence presented in the State court proceeding.

*(1) The Trial Court Did Not Violate Constitutional Standards When It Excluded The Testimony Of Tony Houk*

Petitioner first claims that his conviction and/or sentence is constitutionally invalid because the trial court erroneously excluded material evidence. In support of this claim petitioner pleads:

> Police reports and trial testimony indicated a strong likelihood that petitioner's home was burglarized just prior to his arrival home to find his wife's dead body. At trial, a witness (Tony Houk) came forward with information corroborating the burglary and identifying Steve Lee and Tom Luce as the burglary suspects. Mr. Houk asserted that Lee and Luce admitted to him that they committed the burglary and that Mrs. Young was accidentally killed by a stray bullet fired by petitioner who, upon arriving home, surprised the burglars in the act. The trial court erroneously denied petitioner's offer of proof to show the corroborating circumstances supporting this critical testimony under ER 804.

Petition at p. 5(a).

This issue was addressed on direct appeal by the Washington State Court of Appeals. The state court opined:

> Young attempted to offer a hearsay exculpatory statement through the testimony of one Tony Houk. His attorney submitted an affidavit

outlining the expected testimony, and also described orally what he thought the testimony would be. However, because he was somewhat uncertain about what Houk would say, he also asked to interrogate Houk in court before presenting his testimony to the jury. Young now contends that the court's refusal to permit this denied him the right to make an offer of proof. It did not.

The trial court rejected Houk's testimony, offered under ER 804, for want of a sufficient showing of corroborating circumstances. We find no merit in Young's contention that this was error.

Houk apparently would have testified that Steve Lee, Houk's half-brother, told him that Steve and Tom Luce "did" a burglary at Hillcrest Baptist Church. Steve Lee was supposedly the getaway driver, while Luce burgled the house. Tom Luce was startled by Elva Young, she screamed, Grady Young (who was present) armed himself and shot at Luce, who ducked, and the bullet struck Elva. Tom and Steve then made a getaway. [Footnote omitted].

At the threshold, we notice that Young has made no record showing that the declarant, Lee, was unavailable. Inasmuch as Houk's testimony was offered under ER 804(b)(3), this was an indispensable requirement. *State v. Ng*, 104 Wn.2d 763, 772, 713 P.2d 63 (1985).

Moreover, ER 804(b)(3) states, in part:

> (3) . . . A statement tending to expose the declarant to criminal liability and *offered to exculpate the accused is not admissible unless*

> *corroborating circumstances clearly indicate the trustworthiness* of the statement.
>
> (Italics ours.)
>
> Trustworthiness, *clearly* shown by corroborating circumstances, is the *sine qua non* of the rule. [Citations omitted].
>
> We find it unnecessary to discuss the details Young claims corroborate this testimony, for it is obvious that a hearsay story so totally at variance with Young's own version of events can hardly be considered trustworthy. [Citation omitted].

As noted by respondent, it is significant to recognize that Mr. Young's offer of proof was made after he had testified and Mr. Young's testimony is extremely inconsistent with the offered hearsay statements of Tony Houk.

After reviewing the trial transcript, the decision of the State Court of Appeals, the arguments presented by the parties and the remaining record, this court concludes that the state court's rulings with respect to petitioner's first claim for relief were neither contrary to, nor an unreasonable application of, clearly established federal law. The Court should dismiss petitioner's first claim on the merits.

*(2) Sufficient Evidence Was Presented At Trial To Support Mr. Young's Guilt*

The Constitution forbids the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970). When evaluating a claim of insufficiency of evidence to support

a conviction, the reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original).

Here, after granting petitioner's motion to reconsider his 1992 personal restraint petition, the State Court of Appeals reviewed the claim that not enough evidence was presented at trial to sustain a guilty verdict against Mr. Young. In its decision, the state court of appeals highlighted the evidence presented at trial and several inconsistencies between petitioner's testimony and the investigators' reports and testimony. The State Supreme Court affirmed the lower court's decision, stating:

> The Court of Appeals also did not err in rejecting Mr. Young's challenge to the sufficiency of the evidence. Mr. Young was convicted of murdering his wife. She was shot in the head and back with a .22 caliber rifle police found under the Youngs' house. Mr. Young's fingerprints were on the plastic bag in which the gun had been hidden. Police also found, under Mr. Young's bed and in his closet, several items he had reported as missing from his house. There was, in short, ample evidence from which a rational trier of fact could conclude that Mr. Young murdered his wife. [Citations omitted].

After reviewing the trial transcript, argument presented by the parties, and the remaining record, this court concludes the state courts' rulings with respect to petitioner's sixth claim for relief were neither contrary to, nor an unreasonable application of, clearly established

federal law. The Court should dismiss petitioner's sixth claim on the merits.

## CONCLUSION

Petitioner's second, third, fourth, fifth, seventh, eighth, and ninth claims have not been properly exhausted at the state level, the state has procedurally barred him from attempting to exhaust his claims, petitioner has not shown any cause or prejudice due to his default. Accordingly, the Court should deny petitioner's request for writ of habeas corpus based on these claims. In addition, the Court should deny petitioner's request for writ of habeas corpus based on his firs and sixth claims because these claims have been properly addressed by the state courts. A proposed order and proposed judgment accompanies this report and recommendation.

DATED this 13th day of November, 1997.

/s/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

| | | |
|---|---|---|
| GRADY R. YOUNG, Petitioner, v. CHRISTINE GREGOIRE, Respondent | ) | Case No. C97-5244RJB<br>ORDER<br>(Filed Dec. 15, 1997) |

The Court, having reviewed the petition, the Report and Recommendation of the Hon. J. Kelley Arnold, United States Magistrate Judge, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and Order:

(1) The Court adopts the Report and Recommendation;

(2) The petition for writ of habeas corpus is DENIED;

(3) The Clerk is directed to send copies of this Order to petitioner, to counsel for respondent, and to the Hon. J. Kelley Arnold.

DATED this 12 day of Dec., 1997.

/s/ Robert J. Bryan
Robert J. Bryan
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

| | |
|---|---|
| GRADY R. YOUNG,<br>Petitioner,<br>v.<br>CHRISTINE GREGOIRE,<br>Respondent | Case No. C97-5244RJB<br>ORDER DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT<br>(Filed Jan. 30, 1998) |

THIS MATTER comes before the court on Petitioner's Motion for Relief from Judgment (Dkt. 22). The court has considered the pleadings filed in support of the motion and the file herein.

Pursuant to Fed.R.Civ.P. 60(b)(1), the petitioner asks the court to relieve him from the judgment entered on December 12, 1997 adopting the Magistrate's Report and Recommendation and denying the petition for writ of habeas corpus (Dkt. #19) The petitioner is concerned that the court adopted the Report and Recommendation without considering his Objection and Memorandum filed on December 8, 1997 (Dkt. #18).

The petitioner incorrectly presumes that the court made its decision without reaching the merits of the petition. The court signed the Order on December 12, 1997 after carefully reviewing the argument presented in the petitioner's Objection and Memorandum, which was filed on December 8, 1997. The petitioner's motion should be denied.

Therefore, it is

**ORDERED** that Petitioner's Motion for Relief from Judgment is **DENIED**.

The clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 30 day of Jan., 1998.

/s/ Robert J. Bryan
Robert J. Bryan
United States District Judge

**APPENDIX F**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CLALLAM

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>vs.<br>GRADY RAY YOUNG,<br>[SID WA13345785]<br>Defendant. | NO. 86-1-00065-7<br>JUDGMENT AND SENTENCE (PRISON COMMITMENT)<br>(CCSO #86-09874)<br>(Filed April 1, 1987) |

## I. HEARING

1.1 A sentencing hearing in this case was held on April 1, 1987.

1.2 Present were:

| | |
|---|---|
| Prosecuting Attorney: | David H. Bruneau |
| Defendant: | Grady Ray Young |
| Defendant's Attorney: | Craig A. Ritchie |
| Other: | David R. Young, (Defendant's son) |

1.3 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown – defense motions denied by Court.

## II. FINDINGS

Based on the testimony heard, statements by defendant and victims, argument of counsel, the presentence report and case record to date, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on March 4, 1987, by jury verdict of:

Count No. I

Crime: MURDER IN THE FIRST DEGREE
RCW 9A.32.030(1)(a)
Date of Crime: August 9, 1986

[ ] With a special verdict/finding for use of deadly weapon on Count

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

[ ] Additional Current Offenses are: None.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

| Crime | Sentencing Date | Adult or Juv.Crime | Date of Crime | Type of Crime |
|---|---|---|---|---|
| None | | | | |

2.3 SENTENCING DATA:

| | Offender Score | Seriousness Level | Range | Maximum Term |
|---|---|---|---|---|
| Count I | 0 | XIII | 240-320 mo. | Life |

2.4 EXCEPTIONAL SENTENCE:

[ ] Substantial and compelling reasons exist which justify a sentence (above) (below) the standard

range for Count(s). Findings of Fact and Conclusions of Law are attached in Appendix.

2.5 CATEGORY OF OFFENDER: The Defendant is:

[XX] An offender who shall be sentenced to confinement over one year.

[ ] An offender who shall be sentenced to confinement one year or less.

[ ] A first-time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.-030(12), .120(5)).

## III. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of:

MURDER IN THE FIRST DEGREE (RCW 9A.32.030(1)(a)).

## IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 Defendant shall pay to the Clerk of this Court:

(a) $____, Court costs;

(b) $____, Victim assessment;

(c) $____, Restitution
[ ] Schedule of restitution attached as Appendix.

(d) $____, Recoupment for attorney's fees;

(e) $___, Fine;

(f) $___, Other costs for:

(g) $___, TOTAL monetary obligations.

(i) Payments shall be made in the following manner:

_____

_____

(j) This court shall retain jurisdiction over the defendant for a period of ten years to assure payment of the above monetary obligations.

4.2 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing April 1, 1987:
(Date)

280 months for MURDER IN THE FIRST DEGREE;

[X] Credit is given for (time) (29 days) served.

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference: NONE.

DONE IN OPEN COURT THIS 1st day of April, 1987.

/s/ Gary W. Velie
GARY W. VELIE, JUDGE

Presented by:

/s/ David H. Bruneau
DAVID H. BRUNEAU,
Prosecuting Attorney

Approved as to Form:

/s/ Craig A. Ritchie
CRAIG A. RITCHIE,
Attorney for Defendant

FINGERPRINTS

---

[Actual Fingerprints Omitted In Printing]

Right Hand Fingerprints of:

GRADY RAY YOUNG

Dated: 4-1-87

CERTIFICATE

I, EMILY RUSSO, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: 4-1-87

EMILY RUSSO, Clerk

By: /s/ F. Wooldridge
Deputy Clerk

Attested by:

By: /s/ F. Wooldridge

OFFENDER IDENTIFICATION

| | |
|---|---|
| S.I.D. No. WA13345785 | Race: White |
| FBI No. _____ | ORI WA0050000 |
| SS No. 454-46-5217 | OCA 86-09874 |
| Date of Birth: 02/01/26 | OIN _____ |
| Sex: Male | DOA 08/12/86 |

# WARRANT OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of Clallam County and the Secretary of the Department of Corrections and the Superintendent of the Washington Corrections Center of the State of Washington, GREETING:

WHEREAS, GRADY RAY YOUNG has been duly convicted in the Superior Court of the State of Washington, for the County of Clallam of the crime(s) of:

MURDER IN THE FIRST DEGREE
(RCW 9A.32.030(1)(a)

and judgment has been pronounced against him and he has been sentenced to a maximum term of imprisonment in such correctional facility under the supervision of the Department of Corrections, Division of Institutions, as shall be deemed appropriate by the Secretary of said Division, pursuant to RCW 72.13.120 and RCW 72.09.040;

NOW, THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the transportation officers of the Department of Corrections authorized to conduct him to the Washington Corrections Center, and this is to command you, the said Superintendent of the Washington Corrections Center, to receive from the said officer or officers the said defendant for confinement, classification and placement in such correctional facility under the supervision of the Department of Corrections as shall be deemed appropriate by the Secretary of said Division.

And these presents shall be authority for same.

HEREIN FAIL NOT.

WITNESS: The Hon. /s/ Gary W. Velie
GARY W. VELIE
Judge of the said
Superior Court and the
seal thereof this 1st day
of April, 1987.

EMILY RUSSO - Clerk
County Clerk

By: /s/ F. Wooldridge
Deputy

## APPENDIX G

LAW OFFICES OF

EDWARDS AND BARBIERI

A PROFESSIONAL SERVICE CORPORATION

[names and address omitted in printing]

April 29, 1988

Rev. Grady Ray Young
Unit 1 North, #927915
P.O. Box 520
Walla Walla, WA 99362

Mr. David R. Young
8503 N.E. 13th Street
Vancouver, WA 98664

Gentlemen:

I enclose for your information a copy of the Brief of Respondent which we have received from the state. We will immediately begin preparing a reply brief.

The state's brief is much like the state's case at trial. It is founded on innuendo, elaborated by speculation. My impression after an initial reading is that the brief is long on facts and short on the law. The prosecutors have simply not come to grips with the issues of law which we raised in the brief.

Very truly yours,

/s/ Charles K. Wiggins
Charles K. Wiggins

CKW: cer
Enclosure
5782J

**APENDIX H**

Court of Appeals No. 16773-5-II

Supreme Court No. 62589-1

SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

V.

GRADY RAY YOUNG,

PETITIONER.

APPEAL FROM COURT OF APPEALS
DIVISION II

In re the Personal Restraint Petition
of Grady Ray Young

PETITIONER'S REPLY

Grady Ray Young #927915 Pro se

Grady Ray Young #927915
P.O. Box 520, Unit 4-A-6
Washington State Penitentiary
Walla Walla, WA 99362

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## I. IDENTITY OF PETITIONER

Comes now Grady Ray Young, Pro Se, defendant in the trial court and petitioner in the Court of Appeals, and Petitioner in the State Supreme Court Of The State Of Washington, files this Reply to Respondent's Response in this Motion For Discretionary Review in this court.

## II. HISTORY OF PROCEEDINGS

Petitioner filed a "Petition For A Writ of Habeas Corpus" and "Supporting Brief" in the Washington State Supreme Court on August 8, 1992; Case No. 59537-2. It

was accepted as a "Personal Restraint Petition" and was subsequently transferred to the Court Of Appeals, Division II; Case No. 16773-5-II. On February 24, 1994 the Court Of Appeals issued an order dismissing the Petition. Petitioner filed a Motion For Reconsideration on March 12, 1994. That Motion For Reconsideration was granted on June 29, 1994. On August 20, 1994 Petitioner filed a "Supplemental Memorandum Supporting Petitioner's Personal Restraint Petition With Newly Discovered Evidence Not Available At Trial" after the Clallam County Superior Court had refused to respond in any way when it was filed in that Court. On November 22, 1994 the Court Of Appeals dismissed Petitioner's Petition having refused to respond in any way to Petitioner's motion of August 20, 1994 even though it is also an exception to RCW 10.73.090(3) as seen in RCW 10.73.100(1). Petitioner filed a "Motion For Reconsideration" on December 10, 1994. Petitioner's Motion For Reconsideration was denied on January 17, 1995. On February 13, 1995 Petitioner filed a "Motion For Discretionary Review" in the State Supreme Court, Case No. 62589-1.

## III. PETITIONER'S REPLY TO RESPONDENT'S RESPONSE

Respondent charges that Petitioner's "Motion For Discretionary Review" is not valid under RAP 13.4(b). However, when Petitioner's Personal Restraint Petition is examined in light of RAP 13.4(b)(3) and (4) there is sufficient reason to grant review and correct the injustice that began in Clallam County Superior Court and has been perpetuated by the Court Of Appeals. Issues "A" and "B" are both exceptions to RCW 10.73.090(3) as seen in RCW

10.73.100(1) and (4). A conviction without sufficient evidence is a gross violation of the Constitution of the State Washington and the United States. And a conviction secured by the use of perjury (some of it appears to have been suborn perjury) is also a gross violation of those two constitutions. These two violations constitute a significant question of law under those two constitutions for this court to accept this case for review.

The Court Of Appeals did not do a thorough job in reaching their decision to dismiss the issue of insufficiency of evidence (Issue "A") and they have refused to address the issue of perjury (Issue "B") in any way.

Since the prosecuting attorney's closing argument is a prime source of the information used in their decision to dismiss the case, it appears advisable to examine that in detail now. The witnesses were required to take an oath before they testified so that oath will be used as the standard for measurement in this examination. That oath was: "Do you solemnly swear that the testimony you shall give in the cause before you now will be the truth, the whole truth, and nothing but the truth, so help you God." (Exhibit 1 in "Supplemental Memorandum Supporting Petitioner's Personal Restraint Petition With Newly Discovered Evidence Not Available At Trial" dated August 20, 1994). The Respondent made the statement to the jury in his closing argument: "Consider the lies that the defendant has put forth" (RP 3050). Therefore using his terminology we will consider the "lies" Mr. Bruneau told the jury in his closing argument:

1. "This kind of ammunition does not leave what we refer to as gunshot residue" (RP 3037) but the FBI

Firearms Expert said: "It's what we call gunshot residue" (RP 3187). "At one foot I would get a tremendous amount of gun powder and soot" (RP 3188).

2. "I would argue, that Elva Young came into the house, and was probably just a few feet into the door" (RP 3038). The FBI Firearms Expert said: "I fired ten shots. The closest one was four feet away and the farther was seven feet away. And all of them went slightly forward of the ejection port" (RP 3185-86). Looking at Exhibit #1 and Exhibit #4 the casings would have ejected into the kitchen toward the dining room if his argument were true for two of the shots. To ricochet all the way into the living room as claimed by him would have been impossible due to the walls and furniture in the mobile home.

3. "I submit it was the defendant, waiting inside that house, armed with this rifle, the murder weapon, and he shot her dead and made sure she was dead" (RP 3040). There is absolutely no testimony or evidence to support that statement anywhere in the trial transcript.

4. "And, of course, her purse was on the other side of the porch." (RP 3040). Testimony says the purse was on the ground not on the porch. (Exhibit 70, RP 1431).

5. "I submit that the door was not even locked" (RP 3041 There is absolutely no testimony or evidence to support that argument in the entire trial transcript.

6. " "When the detectives found the purse, it was closed" (RP 3041). But the witness testified: "After reviewing the photograph, I noticed that a wallet that had been in the purse was partially out of it, so I would say

that the purse was partially opened and partially closed" (RP 2184, Ex. 12 RP 1434, Ex. 70 RP 1431).

7. "She knew that Grady was home" (RP 3041). But Ms. Bemis testified about the 911 call: "He told me that he came home and found his wife had been shot" (RP 1017).

8. "This is the defendant who bought this gun about three weeks before he killed his wife, and didn't tell anyone about it" (RP 3041). But Lee Kem testified: "Brother Grady mentioned that he had inherited some money, after the death of his father, and that with that money he had bought an exercise machine and a .22 that he planned to use for target practice in the back yard" (RP 2974).

9. "Target shooting? Well, he didn't buy any targets" (RP 3042). Who needs store bought targets for target practice? Lee Kem testified: "And a .22 that he planned to use for target practice in the back yard" (RP 2974).

10. "Hunting? With a .22?" (RP 3042). Testimony says: "Q. or your plan at least, you told Deputy Hopf, was to target shoot with this weapon and if liked it, then you were going to get a larger caliber weapon to go hunting?" "A. Yes" (RP 2845).

11. "And then we have this screwdriver that has been admitted into evidence. This came from Swain's" (RP 3043). But witness said: "I just know we have that same color and kind" (RP 1679).

12. "And this screwdriver, according to the FBI, is a new one. It's got some grinding marks that come from the manufacturer, but under microscopic examination it

hasn't been used" (RP 3043). But FBI agent Riedman testified: "Q. Can you say conclusively that it was not used on anything?" "A. No, I can't say that" (RP 3200).

13. "I submit that this prop was purchased by the defendant on Saturday, August 9th" (RP 3043) But the witness said she did not recall anything that was purchased. She also said: "Yes, it could have been Friday or Monday" (RP 1677).

14. "She remembered specifically that the defendant went through the line on Saturday before her lunch break" (RP 3044). But witness said: "Q. Is there a chance at all that it was after the lunch break?" "A. Yes" (RP 1677).

15. "The defendant, at the request of the officers, takes the officers through the house" (RP 3044). But Sgt. Henry testified: "Q. What directions did you give?" "A. I urged him to be very cautious, because we did not want to contaminate any evidence. I asked him to basically follow in my footsteps, to follow my lead, not touch anything" (RP 1392).

16. "The defendant rattles off, well, I've got an attache case usually kept it here." (RP 3045). But Sgt. Henry said: "Q. So, it was just what he could see, the way things were right then, is that correct?" "A. That was in plain view, that is correct" (RP 1396).

17. "Shotgun is kept in here, in the closet" (RP 3045). Instructions in each room were "take note of anything that appeared to be disturbed, or anything that appeared to be missing from within the residence" (RP

1373). Exhibit #4 (the video) clearly shows the east sliding door of the closet on the north side of the master bedroom to be open and the corner of the closet where the shotgun was kept was clearly visible. The shotgun was missing from it's usual place.

18. "All missing items 'found' (RP 3046). Please refer to pages 3, 4, and 5 of this Motion For Discretionary Review for full description of the "finding" of these missing items. That reveals a different situation all together.

19. "And then the next day, we find the shotgun and the murder weapon inside State's Exhibit 99" (RP 3046). Exhibit 99 had fingerprints and palm prints of Grady Young, fingerprints of Donald Kirst and palm prints of Matt Dalton (RP 1936). But the shotgun was in Exhibit 100 (RP 1927). There were no prints on one bag (Ex. 100) (RP 1949). Police confiscated a box containing plastic bags (Ex. 124) from the basement of Hillcrest Baptist Church (RP 1962) that were like the bags the guns were found inside of. The fact that there were no prints on the bag the shotgun was found in defies all logical explanation. Police handled both bags and possibly Grady Young did also. (Police RP 1583-85; Grady Young RP 2455-56, 2824-25). Who washed the bag or switched the one the shotgun was found in with one of the "new clean" bags from the box the police confiscated from the basement of Hillcrest Baptist Church (RP 1962, Ex. 124).

20. "Maybe a shotgun" (RP 3047). But the police testified: "He said that there was a shotgun that was his, that had been taken from what he referred to as his closet, which is on the north wall, just adjacent to the bathroom door there" (RP 1379). And Ex. #4 shows the corner of the

closet very plainly where the shotgun was kept and the corner was missing the shotgun in the video (Ex. #4).

21. "But unfortunately, the Sheriff's Department did a more thorough job" (RP 3048). Did they? Consider: (1) No casts were made of the tire track and footprint found by the Blood Hounds (RP 2152-54, 2173-79). (2) Sgt. Henry knew exactly where to have Petitioner stand in the only two rooms in which items were missing so he could see plainly what was described as the place where the items had been. (RP 1392-1394). (3) Absolutely no effort was made to secure fingerprints off the attache case when it was "found" (RP 1521). (4) Absolutely no effort was made to secure fingerprints off the suitcase that the jewelry box was "found" inside (RP 1577). (5) An unidentified person moved the sled used as a latch for the doors to the area under the mobile home (RP 2458) because neither police officer moved it to gain access (RP 1583-85, 1648) but Ex. #4 and Ex. #8 show it in place (RP 1063, 1068, 1104) even though the area had been secured by police on August 9, 1986 (RP 1132). And (6) police claimed they seized a pair of pants and a shirt off the bed in the master bedroom (RP 1642-43) but Betty Young presented them at trial (RP 2462-63, Ex. # 160, Ex. 161 Is that doing a thorough job of investigation?

22. "They found this stuff stashed away, by the defendant" (RP 3048). But testimony and evidence show: no effort by police to secure fingerprints from the attache case when "found" nor from the suitcase the jewelry box was "found" in (RP 1521, 1577). An unidentified person had been in the area secured by police on August 9, 1986 (RP 1132-33) and had moved the sled used as a latch for the doors (RP 2458) to the crawl space under the mobile

home (RP 1583-85, 1648). And Defendant testified at trial that he did not "stash" this stuff away (RP 2826, 2827).

23. "And, later, when he's confronted by Sgt. Henry on August 12th, he's shown a picture of each item that had been noted as missing. . . . so what?" (RP 3050). But Sgt. Henry's questions were: "Does this look like . . . ?" And Defendant's response was simply: "It looks like it . . . " (RP 2241).

24. "The Defendant said he walked to the church, to make the phone call. The 911 call. And then walked back to the house and waited" (RP 3050-51). Mr. Bruneau called that a lie (RP 3050). But consider: it was 366 feet and two inches from the steps of the back porch of the mobile home to the office door of the church (RP 1667). Defendant walked at the rate of 5 MPH (RP 2856) which meant it took less than one minute to walk each way. There was adequate elapsed time for Defendant to be back at the house before Louise Ensor made her call (RP 1686).

25. "The only time this defendant ever went to that church, at least on the day he killed Elva Young, was to get some bags to bag up those weapons" (RP 3051). There is absolutely no testimony nor evidence to warrant such a lie by the prosecuting attorney.

26. "I submit that the evidence demonstrates that he bought the screwdriver at Swain's on Saturday" (RP 3051-52). But the witness testified: "*Q*. But you don't recall anything that was purchased? *A*. No. *Q*. Okay, and is there any chance at all that that was not on – first of all, Saturday? *A*. Yes it could have been Friday, or Monday" (RP 1676-77).

27. "Are you doing any marriage counseling? Is your wife doing any marriage counseling, and he says no. And of course, we hear from Pamela Kelly, that in fact she has been going to the defendant for marriage counseling" (RP 3052). But Deputy Hopf testified that Defendant answered the question about marriage counseling by saying, "He wasn't at that time" (RP 1277). And Pamela Kelly testified that there had been no counseling since the trip to Seattle to Children's Hospital (RP 1784). That trip was on July 21, 1986.

28. "Then of course we have the clothes on the bed" (RP 3052). But the police officer testified: he did not seize the clothes because some other officer seized them (RP 1642-43). That was a "police goof" in the investigation because they had not seized the clothes at all. The police had turned the mobile home back to the family after having completed their "investigation" there before Betty Young found the clothes and later presented them at trial (RP 2462-63; Ex. #160, Ex. #161).

29. "Simply that when a man is innocent, that nothing whatsoever will point to his guilt" (RP 3053). To this point in his closing argument Mr. Bruneau has misstated the testimony of the witnesses, used perjury, made statements absolutely not based on testimony or evidence offered at trial, and also used innuendo to build his case. A careful reading of the trial transcript and a good look at the Exhibits offered at trial totally destroys his claims. Insufficiency of evidence is a reality and gross violation of the constitution of the State of Washington and the United States.

30. "Everything in this case points to the defendant's guilt and nothing else, and no one else" (RP 3054). That statement is not true according to the trial tanscript including the testimony of the witnesses and the evidence offered in the Exhibits.

The use of lies by a prosecuting attorney to secure a conviction indeed raises a significant question of law under the constitutions of the State of Washington and the United States in violation of the guarantee of due process and a fair trial. That calls for a review of this case under RAP 13.4(b)(3) by this Court.

"Issue 'B' ", which is Petitioner's "Supplemental Memorandum Supporting Petitioner's Personal Restraint Petition With Newly Discovered Evidence Not Available At Trial" which was filed in Clallam County Superior Court on March 12, 1994 but was totally ignored by that Court and was then filed in the Court Of Appeals, Division II on August 20, 1994 and was also totally ignored by that Court. Both of those Courts refused to respond in any way. The perjury of Dr. William J. Brady appears to be suborn perjury. Dr. Brady introduced his book while on the witness stand but lied about the name of his book and then contradicted his research in his book to arrive at the testimony about the liver of Elva Young being an alcoholic liver thus creating a medical impossibility in order to "provide a motive for murder." It is inconceivable that the doctor would commit those errors without some prompting and assurances that he would never be discovered. "Issue 'B' " also raises a significant question of law under the constitutions of the State of Washington and the United States and calls for a review of this case under RAP 13.4(b)(3).

Issues "A" and "B" both involve misconduct of a public official and should be issues of substantial public interest that should be reviewed by The State Supreme Court Of The State Of Washington according to RAP 13.4(b)(4).

## IV. CONCLUSION

Therefore, since Petitioner's "Motion For Discretionary Review" meets the requirements of RAP 13.4(b)(3) and (4), this Court should accept this case for review.

Respectfully submitted this 12th day of April 1995.

/s/ Grady Ray Young
Grady Ray Young, Petitioner

## APPENDIX I

OREGON STATE HEALTH DIVISION

KRISTINE GEBBIE
Administrator

**NEWS RELEASE**

October 3, 1985

Contact: Art Keil, Exec. Asst.
229-5806

FOR IMMEDIATE RELEASE

BRADY'S TERMINATION IS FINAL

Trust and confidence have been violated by Dr. William Brady through his systematic 16-year diversion of public funds. The integrity and ethics of a position of public trust are the central standard of Oregon's system of government. Dr. Brady knowingly violated public trust and confidence and this cannot be outweighed by his technical skills.

"Trust and confidence in Oregon State Government cannot be restored if Dr. Brady continues to work," said Kristine Gebbie, Administrator of the Health Division. "I have terminated his employment effective 9:00 a.m., October 3rd."

On Wednesday, September 25th, Dr. Brady was given one week to present further evidence in support of his contention that he should not be terminated. Gebbie granted this extension because she did not wish to deny Brady the same consideration given to other public employees who are subject to similar disciplinary actions.

"He presented no compelling evidence for me to retain him," Gebbie said.

The Attorney General conducted a comprehensive three month investigation of allegations against Dr. Brady and his conduct in the State Medical Examiner's office. The findings of this investigation revealed four major areas of violations that have led to his termination:

1) Dr. Brady established a private autopsy business that he conducted from the State's Medical Examiner's office. He performed, and instructed his staff to perform, autopsies as well as process the necessary clerical work during the normal work hours they were employed by the State of Oregon. Payments from this business went into Dr. Brady's personal and private bank accounts. This money was not used for any office functions or supplies.

2) Dr. Brady performed private autopsies for federal agencies which were billed to the federal government. These autopsies should have been done in the normal process of state business and at state expense. Monies from these autopsies went into Dr. Brady's private bank accounts.

3) Dr. Brady diverted over $16,000 of monies paid to the State of Oregon and placed these funds in a private bank account from which he authorized expenditures for such things as lunches, staff parties, coffee and other items not authorized by state government regulations.

4) Dr. Brady used state contracted laboratory services for his private autopsy business and charged the State of Oregon for these services.

Dr. Larry Lewman was also given an opportunity to review the facts relating to his proposed termination.

After discussing the issues Wednesday, Ms. Gebbie decided to retain Dr. Lewman in his position with the Health Division, but reduce his salary to the second step of his salary range. The Division will, of course, seek restitution of funds rightfully belonging to the State.

Dr. Lewman performed private autopsies for personal gain, but did so without questioning the apparent standards of practice set by his supervisor. He was not involved in the so-called "slush fund" issue.

Dr. Lewman will continue to provide forensic pathology services and technical assistance to the statewide Medical Examiner Program. "The Division will continue to deliver a high level of medical examiner service to Oregonians," Gebbie said.

"State employees, particularly those in highly paid or visible positions, assume an extra burden of ethical behavior for managing the public's programs and money. State government cannot tolerate a dual system that excuses unethical behavior because of an individual's high position in government. State officials must exhibit a higher standard of integrity," said Gebbie. "I personally do not want to see state government's integrity violated in any way," Gebbie added.

Supreme Court, U.S.
FILED
99 226 JUN 7 1999
OFFICE OF THE CLERK

No. _____

In The

# Supreme Court of the United States

GRADY R. YOUNG,

*Petitioner,*

v.

CHRISTINE GREGOIRE,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## SUPPLEMENTAL APPENDIX

GRADY R. YOUNG #927915, Pro se
Washington State Penitentiary
1313 N. 13th Ave. / MSC AB102
Walla Walla, Washington 99362

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | |
|---|---|
| GRADY R. YOUNG,<br>Petitioner,<br>v.<br>CHRISTINE O. GREGOIRE,<br>Respondent. | No. 98-35223<br>D.C. No.<br>97-CV-5244-RJB<br>Western Washington<br>(Tacoma)<br>ORDER<br>(Filed May 20, 1998) |

Before: TROTT and FERNANDEZ, Circuit Judges.

The request for a certificate of appealability is denied. *See* 28 U.S.C. § 2253(c)(2).